

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

KENNY/OBAYASHI, A JOINT VENTURE,

Plaintiff,

v.

Case No.

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CITY OF DETROIT, a Municipal Corporation, and the  
BOARD OF WATER COMMISSIONERS OF THE  
DETROIT WATER AND SEWERAGE  
DEPARTMENT,

Hon.

Defendants.

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Attorneys for Plaintiff

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**COMPLAINT**

Plaintiff Kenny/Obayashi, A Joint Venture ("KOJV"), by its counsel Honigman Miller Schwartz and Cohn LLP, states the following as its Complaint against Defendants City of Detroit ("City") and the Board of Water Commissioners of the Detroit Water and Sewerage Department ("DWSD"):

1. KOJV is a joint venture/partnership with its principal place of business in Northbrook, Illinois. The joint venturers/partners of KOJV are Kenny Construction Company and Obayashi Corporation. Kenny Construction Company is a corporation organized and

existing under the laws of the State of Illinois with its principal place of business in Northbrook, Illinois. Obayashi Corporation is a corporation organized and existing under the laws of Japan with its principal place of business in Japan.

2. The City is a municipal corporation of the State of Michigan, which is headquartered in Wayne County, Michigan. For purposes of this dispute, the City acted by and through the DWSD, which is headquartered in Wayne County, Michigan.

3. This Court possesses jurisdiction over this matter because the amount in controversy, exclusive of interest and costs, exceeds \$75,000 and because there is complete diversity of citizenship between the parties. 28 U.S.C. § 1332.

4. Venue is proper under 28 U.S.C. § 1391.

**COUNT I**  
**BREACH OF CONTRACT**

5. KOJV incorporates Paragraphs 1 through 4, above.

6. On or about September 25, 2008, Defendants entered into an agreement with KOJV for the construction of the South Tunnel of the Upper Rouge Tunnel CSO Control Project (“Agreement”). A copy of the Agreement is in the possession of the parties.

7. On or about October 24, 2008, Defendants directed KOJV to begin performing under the Agreement. KOJV engaged subcontractors, obtained insurance and payment/construction bonds, and otherwise performed work under the Agreement.

8. On or about May 29, 2009, Defendants advised KOJV that they were terminating the Agreement for convenience. Defendants stated that compensation associated with the termination for convenience would be provided to KOJV in accordance with Section 14.2.1 of the Agreement.

9. On or about September 3, 2009, KOJV advised Defendants that \$17,211,769.45 was due to it and all of the affected suppliers and vendors under Section 14.2.1 of the Agreement. Although Defendants made an additional payment thereafter, \$17,069,248.36, exclusive of interest and costs, is still owed.

10. Although KOJV has performed all of its contractual obligations, Defendants have breached the Agreement by failing to pay KOJV the amount due to KOJV under the Agreement.

11. Defendants' breaches of the Agreement have proximately caused KOJV substantial damages far in excess of \$75,000, exclusive of interest and costs.

**WHEREFORE**, KOJV respectfully requests that this Court enter a Judgment in its favor and against Defendants for the entire amount due to KOJV under the Agreement, together with pre-judgment interest, post-judgment interest, costs, and attorney fees.

Respectfully submitted,

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